DOCUMENT RESUME

ED 249 722 EC 170 824

TITLE	Related Services for Handicapped Students: Legal Considerations. Research & Resources on Special Education: Issue II.
INSTITUTION	American Association of School Administrators, Arlington, Va.; Council of Chief State School Officers, Washington, D.C.; National Association of State Boards of Education, Alexandria, VA.; National Conference of State Legislatures, Washington, D.C.
SPONS AGENCY	Special Education Programs (ED/OSERS), Washington, DC. Div. of Educational Services.
PUB DATE	Jun 83
NOTE	20p.
PUB TYPE	Reports - General (140)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Ancillary School Services; Compliance (Legal); Court Litigation; *Disabilities; Elementary Secondary Education; Federal Legislation; *Legal Problems; Special Education; State Legislation; *State Standards
IDENTIFIERS	*Related Services

ABSTRACT

The paper examines current problems, controversies, legal disputes, and judicial rulings regarding the provision of related services to handicapped students. Following a section on background information, statutory requirements are specified and compared in chart form. A summary of legal disputes focuses on specific services (such as catheterization, tracheotomy tube assistance, psychotherapy, and occupational and physical therapy) and on questions of the intent of the law (regarding limitations in terms of ties to special education or academic achievement or limitations to nonmedical services). An analysis of additional policy considerations addresses current legal precedent, the influence of the judiciary, sensitivity of the issue, variations by state, cost sharing strategies, state statutory solutions, eligibility, and personnel preparation. (CL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED249722

RESEARCH & RESOURCES ON SPECIAL EDUCATION

ISSUE II
JUNE 1983

RELATED SERVICES FOR HANDICAPPED STUDENTS: LEGAL CONSIDERATIONS

The delivery of "related services" as part of the education of handicapped children under Public Law 94-142 continues to present a challenge for state and local education agencies. "Related services" are defined as transportation, and such developmental corrective, and other supportive services that are required when necessary for a handicapped child to benefit from special education. They are the types of services, such as physical therapy or special transportation assistance, that in the past have usually been provided by health and welfare agencies.

Since passage of comprehensive federal law in 1975, responsibility has shifted to education agencies for providing these services to school-age handicapped youth. So far, implementation of this mandate nationwide has been inconsistent, often confusing, and sometimes problematic.

This issue brief outlines current problems, controversies, legal disputes, and judicial rulings regarding the mandate that schools provide handicapped students with related services.

- HOW DOES CURRENT LEGAL PRECEDENT DEFINE "RELATED SERVICES"?
- HOW ARE STATES MANAGING PUBLIC CONTROVERSY OVER SERVICES TO HANDICAPPED STUDENTS?
- HOW ARE EDUCATION AGENCIES MANAGING THE ADDED FINANCIAL BURDENS?

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

EC170824

A project for policymakers administered by the **National Association of State Boards of Education** *in cooperation with the Council of Chief State School Officers, National Conference of State Legislatures, and American Association of School Administrators.* **701 N. Fairfax St., Suite 340 Alexandria, VA 22314 (703)684-4000**

BACKGROUND

P.L. 94-142 requires that handicapped children be provided with special education and related services. The services described in the federal law include transportation, psychological services, speech and language or occupational and physical therapy, as well as recreation. This list of services is lengthy but not exhaustive, so that each child's individual needs may be considered. Although there are many services that would undoubtedly help each child, a service is legally mandated only when a child would otherwise fail to benefit from a program of special education and when the service is specified in the child's individualized education program.

Related service requirements involve the schools in novel areas of activity and relationships. Traditionally, school staff have not been trained to deliver such services. Although the costs of providing related services may be borne by health and social service agencies, third party payers or the education agencies themselves, the responsibility for providing services has fallen primarily on state and local education officials.

Most school districts are financially pressed and must seek additional funding to provide even the needed special education, let alone the additional related services. The pressure on local school budgets has only partially been alleviated by federal and state reimbursements or supplements. Yet the law does not allow lack of money to be offered as an excuse for denying services, nor can children be put on waiting lists while a school district locates the financing. Officials are not permitted to deny a service merely because the service is not presently provided to any other student or because its provision would necessitate the hiring of additional personnel.

Naturally, disputes arise over the type and nature of the related services to be offered. For some school officials, a program meets the legal standard if a child is permitted to attend school and is provided with services a local board of education can afford. Some parents, on the other hand, have argued that every service that will aid a child should be provided to the fullest extent possible.

Legally speaking, a student need not be offered the best or most expensive educational techniques, materials, and services available, but public schools must design and develop an individualized education program for the exceptional person so that learning can be attained. As a result of the flexibility built into the wording of the law, educators and parents must allow for related services that may be somewhat esoteric but that are necessary to help a child to learn.

Because "related services" have received definition by the courts, the topic is usually discussed in the context of adversarial disputes, lawsuits, and judicial coercion. It would appear that the courts are overflowing with these cases and that all parties are anxious to sue, but nothing could be further from the truth. In fact, both school officials and parents are highly reluctant to litigate, and judges generally and traditionally do not like to interfere in education matters. According to a Rand Corporation study, "the vast majority of the disputes about special education services are resolved informally or in the administrative due process system."

* *

REFERENCES FOR BACKGROUND:

Goldberg, Steven S. Special Education Law: A Guide for Parents, Advocates, and Educators. New York, New York: Plenum Press, 1982.

Boston University Center for Law and Health Sciences. Related Services, and Medical Services Requirements Under Current Legal Standards. Focus on Special Education Legal Practices (ED Contract No. 300-80-0860). Washington, DC: Closer Look, March 1981.

Hill, Paul T. and Doren L. Madey. Educational Policymaking Through the Civil Justice System. Santa Monica, California: Rand Corporation, 1982.

* *

* *

COMING SOON. . .

. . . from the Special Educaton Dissemination Project:

Closely tied to the "related services" issue, is the controversy over the provision of private/residential and extended school year placements. The next Legal Issue Briefs will present a discussion of these issues.

* *

ABOUT THE PROJECT

This material is made available through NASBE's Special Education Dissemination Project. Working in cooperation with the Council of Chief State School Officers, National Conference of State Legislatures, and American Association of School Administrators, NASBE has undertaken a variety of activities aimed at providing education policymakers with research and practice-based information on special education.

The project is funded by the Division of Educational Services, Special Education Programs, U.S. Department of Education. However, the views expressed herein do not necessarily reflect the position or policies of that Department. This material may be reproduced.

For more information about the project, contact Roberta Felker, Dinah Wiley or Cynthia Chambers at NASBE.

STATUTORY REQUIREMENTS

- P.L. 94-142 requires that handicapped children be provided with special education and related services, defined as:

  > ... transportation, and such developmental, corrective, and other supportive services ... as may be required to assist a handicapped child to benefit from special education.[1]

- Further definition is provided in the regulations, which list the following specific services:

  > ... speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes ... school health services, social work services in schools, and parent counseling and training.[2]

- The federal government makes it clear that these are not the only necessary services which states may be required to provide:

  > The list of related services is not exhaustive and may include other developmental, corrective or supportive services ... if they are required to assist a handicapped child to benefit from special education.[3]

- As indicated in the chart at the end of this section, related services are also required by statutes in 42 states, either by definition (26 states) or by implication (16 states).[4] There are still disparities among state special education statutes, and some remain flawed by obsolete provisions that are incompatible with federal law. Since passage of P.L. 94-142, however, state laws have become more similar than they are different, at least along broad dimensions.[5]

- Discussion

  As lawmakers readily admit, the related services requirement is a general one: What service does the child need to benefit from a program of special education? The answer must be decided on a case-by-case basis.

  It is not surprising that educators have tried to protect their limited resources by searching for appropriate limits upon related services. In court, educators have asserted that a particular service or services are not related to education, but are instead "medical" or "health" related, involve "life supports," or arise from "emotional," "family," or "social" needs. So far, attempts to limit the types of services that must be provided by the schools have generally not been supported by the courts.

* *

REFERENCES

[1]P.L. 94-142, Section 602 (17).

[2]P.L. 94-142 Regulations, 34 C.F.R. 300.13.

[3]P.L. 94-142 Regulations, 34 C.F.R. 300.13, Comment.

[4]Citron, Christiane H. The Rights of Handicapped Students. Denver, Colorado: Education Commission of the States Report No. LEC-2, September 1982.

[5]Winslow, Harold R. and Susan M. Peterson. State Initiatives for Special Needs Students. In Sherman, Joel D., Mark A. Kutner and Kimberly J. Small. New Dimensions of the Federal-State Partnership in Education. Washington, DC: Institute for Educational Leadership, 1982, 46-62.

* *

A COMPARISON OF STATE STATUTORY PROVISIONS FOR RELATED SERVICES

STATE	RELATED SERVICES ARE DEFINED	RELATED SERVICES ARE IMPLIED	SPECIAL EDUCATION STATUTORY REFERENCE
Alabama	X		Ala. Code sec. 16-39-1 et seq. (1975 & Cum. Supp. 1981)
Alaska	X		Alaska Stat. sec. 14.30.180 et seq. (1975 and Supp. 1981)
American Samoa		X	A.S. Code tit. X, sec. 16.1601 et seq. (1981)
Arizona		X	Ariz. Rev. Stat. Ann. sec. 15-761 et seq. (1981 Spec. Pamphlet)
Arkansas		X	Ark. Stat. Ann. sec. 80-2101 et seq. (1980 & Cum. Supp. 1981)
California	X		Cal. Educ. Code sec. 56000 et seq. (West Supp. 1982)
Colorado			Colo. Rev. Stat. sec. 22-20-101 et seq. (1973 and Supp. 1981)
Connecticut	X		Conn. Gen. Stat. Ann. sec. 10-76a et seq. (West 1958 & Supp. 1981)
Delaware	X		Del. Code Ann. Tit. 14 sec. 3101 et seq. (1981)
District of Columbia			The special education law is found in Rules of the Board of Education Chapter 4, secs. 450-457 (September 21, 1977)
Florida	X		Fla. Stat. Ann. sec. 230.23 (4)(m)(West Supp. 1981)
Georgia			Ga. Code Ann. sec. 32-605a (1980)
Guam			Guam Gov't Code sec. 11980 et seq. (1976)
Hawaii	X		Hawaii Rev. Stat. sec. 301-21 et seq. (1976 & Supp. 1981)
Idaho	X		Idaho Code sec. 33-2001 et seq.(1981)
Illinois	X		Ill. Ann. Stat. ch. 122 sec. 14-1.01 et seq. (Smith-Hurd Supp. 1981)
Indiana		X	Ind. Code Ann. sec. 20-1-6-1 et seq. (Burns Supp. 1981)
Iowa		X	Iowa Code secs. 273.1, 281.1 et seq. (1981)
Kansas	X		Kan. Stat. Ann. sec. 72-961 et seq. (1981)
Kentucky	X		Ky. Rev. Stat. Ann. sec. 157.200 et seq. (1980 & Cum. Supp. 1980)
Louisiana	X		La. Rev. Stat. Ann. sec. 17:1941 et seq. (West Supp. 1982)
Maine		X	Me. Rev. Stat. Ann. tit. 20, sec. 3121 et seq. (1964 & Supp. 1981)
Maryland	X	X	Md. Educ. Code Ann. sec. 8-401 et seq. (1978 & Cum. Supp. 1981)
Massachusetts	X		Mass. Gen. Laws Ann. ch. 71B (West Supp. 1981)
Michigan			Mich. Comp. Laws Ann. sec. 380.1701 et seq. (Supp. 1981)
Minnesota			Minn. Stat. sec. 120.17 (1980 & Supp. 1981)
Mississippi			Miss. Code Ann. sec. 37-23-1 et seq. (1972 & Cum. Supp. 1981)
Missouri		X	Mo. Ann. Stat. sec. 262.670 et seq. (Vernon Supp. 1982)
Montana		X	Mont. Code Ann. sec. 20-7-401 et seq. (1981)
Nebraska	X		Neb. Rev. Stat. sec. 43-601 et seq. (1978 & Supp. 1980 & 1981)

STATE	RELATED SERVICES ARE DEFINED	RELATED SERVICES ARE IMPLIED	SPECIAL EDUCATION STATUTORY REFERENCE
Nevada			Nev. Rev. Stat. secs. 388.440 et seq. 395.001 et seq. (1979 & Supp. 1981)
New Hampshire	X		N.H. Rev. Stat. Ann. 186-C:1 et seq. (Supp. 1981)
New Jersey			N.J. Stat. Ann. sec. 18A:46-1 et seq.(Supp. 1981)
New Mexico			N.M. Stat. Ann. sec. 22-13-5 et seq. (Supp. 1981)
New York	X		N.Y. Educ. Law sec. 4401 et seq. (McKinney 1981 & Supp. 1981)
North Carolina	X		N.C. Gen. Stat. sec. 115C-111 (Cum. Supp. 1981)
North Dakota	X		N.D. Cent. Code sec. 15-59-01 et seq. (1981)
Ohio	X		Ohio Rev. Code Ann. sec. 3323.02 et seq. (Page Supp. 1981)
Oklahoma		X	Okla. Stat. Ann. tit. 70, sec. 13-101 et seq. (West 1972 & Supp. 1981)
Oregon	X		Or. Rev. Stat. sec. 343.035 et seq. (1981)
Pennsylvania		X	Pa. Stat. Ann. tit. 24, sec. 13-1371 et seq. (Purdon 1962 & Supp. 1981)
Puerto Rico		X	P.R. Laws Ann. tit. 18, sec 1331 et seq. (Supp. 1980)
Rhode Island		X	R.I. Gen. Laws sec. 16-24-1 et seq. (1981)
South Carolina	X		S.C. Code sec. 59-33-10 et seq. (1976 & Cum. Supp. 1981)
South Dakota		X	S.D. Comp. Laws Ann. sec. 13-37-1 et seq. (1975 & Supp. 1981)
Tennessee	X		Tenn. Code Ann. sec. 49-2902 et seq. (1977 & Cum. Supp. 1981)
Texas	X		Tex. Educ. Code Ann. tit. II, sec. 16.104 (Vernon Supp. 1981)
Utah		X	Utah Code Ann. sec. 53-18-1 et seq. (1953 & Supp. 1981)
Vermont			Vt. Stat. Ann. tit. 16, sec. 2941 et seq. (1968 & Supp. 1981)
Virginia		X	Va. Code sec. 22.1-213 et seq. (1980 & Supp 1981)
Virgin Islands	X	X	V.I. Code Ann. tit. 17, sec. 281 et seq. (1982)
Washington			Wash. Rev. code sec. 28A.13.005 et seq. (1981)
West Virginia	X		W.Va. Code sec. 18-20-1 et seq. (1977 & Supp. 1981)
Wisconsin			Wis. Stat. Ann. sec. 115.76 et seq. (West Supp. 1981)
Wyoming		X	Wyo. Stat. sec. 21-14-101 et seq. (1977)

NOTES: Where the term "special services" is defined, that is treated as synonomous with "related services" for purposes of this tabulation.

It should be noted that even when this table shows a particular provision is not in the statute, handicapped children may nonetheless be entitled to it on the basis of existing administrative regulations or judicial interpretation.

REFERENCE: Citron, Christiane H. The Rights of Handicapped Students. Denver, Colorado: Education Commission of the States Law and Education Center Report No. LEC-2, 1982, pp. 120-124.

LEGAL DISPUTES OVER SPECIFIC SERVICES

The following specific services have been the subject of legal disputes between educators and parents. In every case, school officials have been ordered to provide the service; when lower courts have ruled in favor of the schools, these rulings have been overturned on appeal.

- Catheterization

  In Texas[1], Pennsylvania[2] and West Virginia[3], school officials have contended unsuccessfully in court that a procedure called Clean Intermittent Catheterization (CIC), required by persons who have spina bifida, is not a service related to education but is instead a medical and life support service.

  In designating catheterization as a related service which schools must provide, a federal court of appeals stated that "without the provision of ... (catheterization, the child) ... cannot be present in the classroom at all." Failure to provide the service amounts to the illegal exclusion of the child from school. The court reasoned that this, plus the fact that catheterization is a simple procedure and one with which children need no assistance by the time they reach third or fourth grade, takes precedence over technical contentions about the definition of "medical" services.

- Tracheotomy Tube Assistance

  In Hawaii[4], a child who has tracheomalacia, a condition requiring a tracheotomy tube so she can breathe and expel secretion from her lungs, would be in danger of dying if the tube became dislodged, necessitating prompt assistance. The court determined that "this service can be provided by a nurse or other trained person who need not be a physician." The teachers, however, resisted and filed a grievance, leading the court to order a private school placement at public expense.

- Psychotherapy

  In Connecticut[5] and Montana[6], schools were ordered to provide psychotherapy or counseling for emotionally disturbed students as part of the required "psychological services." The courts reasoned that emotional problems will inevitably affect the educational progress of a child, and that in this sense, psychological services are related to education. On the basis of P.L. 94-142, the court overrode the Montana state law that specifically excludes psychotherapy from educational functions.

National Association of State Boards of Education
701 N. Fairfax St., Suite 340 Alexandria, VA 22314 (703)684-4000

- Occupational and Physical Therapy

  In Maryland[7], provision of these therapies was challenged despite their specific mention in the P.L. 94-142 regulations.[8] The U.S. District Court upheld their status as related services which schools must provide.

In sum, these lawsuits have resulted in an expanded definition of related services. The broader issues argued in court will be summarized in the next section.

The chart on the following page depicts the degree of consensus that existed among states regarding specific services at the time of a survey conducted in 1980-81. The judicial rulings handed down since that date have probably resulted in a higher rate of consensus regarding medical services, occupational and physical therapy, and psychotherapy.

* *

REFERENCES

[1]Tatro v. State of Texas, 625 F 2d. 557, 5 Cir. (1980).

[2]Tokarcik v. Forest Hills School District, 665 F 2d. 443 (3d. Cir., 1981).

[3]Hairston v. Drosick, 423 F. Supp. 180. S.D. WV (1976).

[4]Hawaii Department of Education v. Katherine D., 531 F Supp. 517 (D Hawaii 1982).

[5]Papacoda v. Connecticut, 528 F. Supp. 68 (D. CT. 1981).

[6]In re "A" Family, 602 P. 2d. 157. S. Ct., Montana. (1979).

* *

Degree of State Consensus Regarding Related Services That May Be Required By 94-142

Related Services	Consensus
Audiology	High
Counseling services	High
Medical services:	
• diagnostic or evaluative purposes	High
• medical/health treatment	Low: many states contend these services constitute medical exclusions, especially catheterization
Occupational therapy	Moderate: some states contend this is a medical or noneducational exception under the law
Parent counseling and/or training	Moderate
Physical therapy	Moderate: some states contend this is a medical or noneducational exception
Psychotherapy	Low: several states view psychotherapy and other such psychological services as a medical or noneducational exception under the law
Recreation	High
School health services	High
Social work services	Moderate
Speech pathology	High
Transportation	High

Source: Responses of 34 states to a survey conducted by the National Association of State Directors of Special Education, Fall-Winter 1980-81, and anecdotal reports.

REFERENCE: Education Policy Research Institute. Finetuning Special Education Finance: A Guide for State Policymakers (ED Contract No. 400-80-0041). Washington, DC: Educational Testing Service, July 1982, 29.

LEGAL DISPUTES OVER THE INTENT OF THE LAW

- Are Related Services Limited by Ties to Special Education?

Because the wording of P.L. 94-142 states that education agencies must provide "special education and related services," educators have questioned whether they must provide these services when they are related to regular education, rather than to special education. In a dispute over provision of catheterization, the child in question did not need special instruction; she was able to participate fully in the normal classroom as long as she had help with her catheter. Educators argued that they were not required to provide this service because it was not related to special education.

Judicial rulings to date have maintained that this argument runs counter to the more fundamental principles of the law. That is, that first and foremost, handicapped children must be afforded the opportunity to attend school, and to suffer no exclusion from school solely because of their handicap. Secondly, handicapped children should be educated in the "least restrictive environment," that is, with nonhandicapped children to the maximum extent appropriate and in the regular classroom whenever possible.[1,2]

- Are Related Services Limited by Ties to Academic Achievement?

If the services required must be related to education, whether regular or special, then how is "education" defined? In court, educators have argued that physical therapy, for example, promotes a student's developmental, not educational achievement; that catheterization meets a child's life support needs, not educational needs; that psychotherapy assists a student's emotional progress, not educational progress. In this context the word "education" is used very precisely, to mean progress in academic subjects.

The courts have used a greatly expanded definition of "education" when the rights of handicapped children are at stake. The rationale is based on the recognition that many of the basic skills which come easily to nonhandicapped children -- walking, talking, minimal self-care -- may represent a high level of achievement for some handicapped students. Thus, one court ruled that the aim of education for handicapped children might be defined as "self-sufficiency" or even "some degree of self-care."[3]

Another court ruled that education may include any program which has the capacity "to equip a child with the tools needed in life,"[4] and still another stated that a service is related when it might be seen as a "prerequisite to learning."[5]

- Are Related Services Limited to Non-Medical Services?

According to P.L. 94-142, schools need not provide "medical" services except for diagnostic or evaluative purposes. This appears to limit the definition of related services, and education officials have argued that physical therapy, administering medications, clinic treatment for learning disabilities, psychotherapy and others are medical services which schools should not have to provide.

The regulations governing 94-142 specify, however, that the only services which schools need not provide are those that must be performed by a licensed physician.[6] Thus schools may be required to provide any services performed by therapists, nurses, counselors, psychologists, audiologists and others.

Most handicapping conditions can be described as "medical" in their origin, but the effect, and their amelioration, is often educational, particularly so under a broad concept of education. The cause generating the need for such a service may be medical, i.e., bladder problems (catheterization) or motor difficulties (physical therapy). But if that need for a service can be met by nonphysicians, the service (if "educational") will generally be related under the law.[7]

According to one writer, determination of a line between a "health" service (which a school is capable of providing) and a "medical" service (which only a doctor can provide) may be a source of dispute in the future, complicated by variances from state to state because of differences in state laws regarding what treatment must be provided or supervised by a physician.[8]

- Are Related Services Limited At All?

A 1982 U.S. Supreme Court decision[9] could influence future courts toward more restrictive rulings on related services. In Rowley, a hard-of-hearing child was already functioning well in a second-grade classroom and sought a wider level of interpreter services to realize a fuller potential. In ruling against her, the court decided that the "appropriate" education which P.L. 94-142 requires schools to provide "did not mean a potential-maximizing education."

This requirement is satisfied, the court wrote, "... by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." In the future, courts could be less willing to order costly "related services" if an educational placement appears more or less adequate without the service.[10]

* *

REFERENCES

[1]Tatro v. State of Texas, 481 F. Supp. 1224. N.D. Texas, (1980).

[2]Hairston v. Drosick, 423 F. Supp. 180. S.D. WV (1976).

[3]Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania, 343 F. Supp. 279. E.D. PA. (1972).

[4]Fialkowski v. Shapp, 405 F. Supp. 946 E.D. PA. (1975).

[5]Gary B. v. Cronin, No. 79-C5383, N.D. Illinois (1980).

[6]P.L. 94-142 Regulations, 300.13 (b)(4).

[7]Tatro v. Texas, Tokarcik v. Forest Hills School District.

[8]Citron, Christiane H. The Rights of Handicapped Students. Denver, CO: Education Commission of the States, Sept., 1982, 20-21.

[9]Board of Education of Hudson Central School District v. Rowley, 102 S. Ct. 3034 (1982).

[10]Citron, op. cit.

* *

ADDITIONAL POLICY IMPLICATIONS

- Current Legal Precedent

The most common areas of dispute have already been considered in the courts, and the concept of related services has not been limited in any significant way. The federal laws, expanded by federal court decisions, have adopted broad definitions of both "education" and "relatedness." At this point in time, related services may be defined as those services inevitably associated with helping handicapped children to become adequately prepared for life.[1]

- Influence of the Judiciary

Though the influence of P.L. 94-142 is always emphasized, judicial interpretations have exerted a major impact on the status quo in this area both before and after passage of a comprehensive federal law. Before enactment of 94-142, a series of landmark court cases established the right to an education for all handicapped children and, further, solidified an expanded notion of "education" and the inevitable supplemental services.[2]

Education litigation has come to be regarded as the antidote to a political process that is sometimes unresponsive to minority needs. According to one author, the threat of a court order is a natural part of our constitutional system and should be regarded as a standard expense for all large organizations. Nonetheless, solutions arising from local consensus are more likely to succeed than those imposed from outside.[3]

- Sensitivity of the Issue

Related services are especially controversial because of the threat of scarce resources being taken from the nonhandicapped in order to serve the handicapped. In addition, various attempts to define, fund and implement the related services provisions have sometimes generated controversy, contributing to some "backlash" sentiment against special education in general.[4]

If school services or extracurricular activities are provided to typical children in a particular age group, handicapped children of the same age must be provided with similar services. This dictate raises an important policy matter. If school officials are providing services and activities to other than exceptional children and advocates demand similar consideration for their clients, it is possible that the benefit granted typical children will be withdrawn. Equal treatment may well be defined as no service for every student. This fact underlines the need for parents of all children to work together when making demands of educational authorities.[5]

States that have developed well defined policies through a process that involves all interested groups from the earliest stages on, have not experienced significant public opinion problems. For the future, states can probably expect even more pressure on limited resources to provide expanded services to diverse groups. States can insist that people articulate their demands with specificity and within the context of a coherent program.

- Variations by State

The levels of related services that are provided are largely influenced by state variables such as levels of state appropriations. Given these differences among states, it is probably unrealistic to expect uniform implementation of interpretive court rulings.[6]

- Spreading Costs Around

Expanded obligations on the schools inevitably tax existing resources. Nevertheless, there are many agencies in most communities which might cooperate in providing related services -- under contract and frequently at low cost. These include agencies for health, public welfare, mental health, mental retardation, social services, youth authority, corrections, vocational rehabilitation, and vocational education. Unfortunately, coordination of diverse service agencies, which often have conflicting priorities, has often been frustrating. In Virginia, an outside facilitator was used successfully to help different agencies become committed to working together.[7]

The State of Maryland, through its State Coordination Council (SCC), has established one model for other states seeking to achieve these ends.[8,9] Agencies are pursuing strategies like the following:

1) developing written interagency agreements for providing related services. The most successful agreements are those forged through open, multigroup processes with the commitment and involvement of all agencies.

2) adjusting the organization, by creating an interagency liaison position, and/or creating a special school district to provide services to students in state institutions, and/or incorporating personnel from other agencies into the special education program.

3) forming an interagency council or task force, vested with real authority, to identify problems, propose solutions, and act as a watchdog agency.

4) arranging for costs to be shared by other provider agencies along more or less traditional divisions of responsibility, or by third party insurers and Medicaid payments.

5) providing technical assistance to local districts in the form of detailed resource information, start-up funds to help implement services, demonstration projects, and staff training.[10]

At present, it is up to state policymakers to answer the following questions: (1) what services fall within the statutory requirements, (2) what services should education agencies provide, and (3) what services should other agencies provide?[11]

- State Statutory Solutions

Although P.L. 94-142 commands most of the attention, the potential of state statutes to be both part of the problem of related services and part of its solution should not be overlooked. If federal requirements were weakened, handicapped students would be likely to assert more claims under state statutes.[12] States can reduce their vulnerability to litigation by eliminating conflicts between federal and state provisions, by repealing outdated and impractical aspects of state law, and by ensuring that policies and definitions are clear.[13] A number of the states are attempting to legislate a solution to the problems of providing related services by writing in mandates to develop interagency agreements, form interagency committees and/or delineate agency responsibility and authority.[14]

The Commission on the Financing of a Free and Appropriate Education for Special Needs Children[15] has developed one approach for school officials to use when determining whether a service needed by a handicapped child is mandated under P.L. 94-142. Specifically, the Commission recommends that three questions be addressed:

1. Is the service itself an integral part of an educational objective?

   For example, speech therapy is an integral part of an educational objective in most states (i.e., oral English proficiency and clarity).

2. If the child left school and did not continue educational activity (e.g., reading instruction), would the child cease to need the service with the same frequency and intensity?

   For example, in many instances a child receiving occupational therapy might not continue to need that service at the same intensity or focused on the same skill areas if he or she left school and did not continue educational activities.

3. In order to be effective, must the service be provided to the child during school hours or within school facilities?

   For example, if a child needs catheterization every four or five hours, the service must be provided during school hours in order to be effective.

If any of these questions is answered affirmatively, then the service should be considered to have an educational purpose, and considered a

related service within the meaning of P.L. 94-142. If the answer to these questions is negative, then the service should not be considered one to which a handicapped child is legally entitled as part of a free, appropriate public education, because it is not related to an educational purpose.

Each state must decide whether this or some other approach would best define the range of related services they will be obliged to provide. In choosing a specific approach, the Commission concluded that sufficient flexibility exists within current law and regulations to permit state education agencies to differentiate more clearly between mandated and non-mandated expenditures.

- Eligibility

  Developing an accurate identification process and subsequently defining the services a child should receive is a key task for policymakers. To date, the states have adopted diverse definitions of which populations are to be served.

- Personnel Preparation

  Personnel preparation is a key to fulfilling this expanded responsibility of the schools, and must include if not focus on awareness building and attitudinal training. Catheterization, for example, is an easy process, but the idea that it is part of one's job description is not so easy for school staff to accept. Yet an expanded definition of education brings with it an expanded role for all personnel associated with educating handicapped children.

As the foregoing discussion reveals, there are a number of considerations which policymakers must address, and actions which must be taken, if related services are to be adequately provided. It is clear that policymakers and administrators should be taking a proactive stance to meet the educational needs of handicapped students, initiating solutions and preventing problems before they occur. In summary, education agencies should focus on clarifying their own statutes, regulations and policies, optimizing interagency cooperation, developing more efficient systems, reallocating existing funds and resources, and generating additional resources whenever possible.

* *

REFERENCES

[1]Boston University Center for Law and Health Sciences. Related Services, and Medical Services Requirements Under Current Legal Standards. Focus on Special Education Legal Practices (Ed Contract No. 300-80-0860). Washington, D.C.: Closer Look, March 1981, 16-17.

[2]Pennsylvania Association for Retarded Children v. Pennsylvania, 343 F. Supp. 279 (E.D. Pa. 1972) and Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972).

[3]Roos, Peter D. Litigation: A Necessary Tool for Educational Reform. Phi Delta Kappan, February, 1983, 64 (6), 417-419.

[4]Education TURNKEY Systems, Inc. P.L. 94-142: A Study of the Implementation and Impact at the State Level, (ED Contract No. 300-80-0658). Falls Church, Virginia: Author, Vol. I, August, 1981, 6.

[5]Goldberg, Steven S. Special Education Law: A Guide for Parents, Advocates, and Educators. New York, New York: Plenum Press, 1982, 26.

[6]Education TURNKEY Systems, op. cit., 9.

[7]Mid-Atlantic Regional Resource Center. Interagency Collaboration: Sharing A Commitment. Special Ideas for Educating Handicapped Children, III-1 (ED Contract No. 300-80-0721). Minneapolis, Minnesota: Upper Midwest Regional Resource Center.

[8]State of Maryland Executive Department. Services to Handicapped Children (Executive Order 01.01.1978.07) August 6, 1979.

[9]Education TURNKEY Systems: Program Policy and Financial Analysis for Improved Services to Handicapped Children, Vol. I. A study conducted for the Maryland State Coordinating Committee on Services to Handicapped Children). Falls Church, Virginia: Author, September 16, 1981.

[10]Thomas, Margaret A. and Susan J. Reese. Making Programmatic Decisions During a Time of Fiscal Retrenchment: The Case of Related Services for Handicapped Youth (ED Contract No. 300-79-0522). Santa Monica, California: Rand Corporation, 1982.

[11]National Association of State Boards of Education. NASBE's Response to the Proposed Regulatory Revisions to Part B of the Education of the Handicapped Act, As Amended (submitted to the U.S. Department of Education). Washington, DC: Author, November 29, 1982, 5.

[12]Citron, op cit., 3.

[13]Gerry, Martin. "Reducing the Legal Vulnerability of an SEA." Speech delivered at the Annual Meeting of the State Directors of Special Education, Louisville, Kentucky, November 1981.

[14]Thomas and Reese, op cit., 29.

[15]The Commission on the Financing of a Free and Appropriate Education for Special Needs Children. The Report from the Commission on the Financing of a Free and Appropriate Education for Special Needs Children. Philadelphia, Pennsylvania: Research for Better Schools, March, 1983.

* *